

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
42P17107

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Signature

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name Theresa Belland

Application No.
10/741,304

Filed
December 18, 2003

First Named Inventor

Naveen Kumar Vandanapu

Art Unit
2819

Examiner
Jean Bruner Jeanglaude

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

NOTE: No more than five (5) pages may be provided.

I am the:

- applicant/inventor.
- assignee of record of the entire interest.
See 37 CFR 3.71. Statement under of 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- Attorney or agent of record.
Registration Number 54,962
- attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

Signature

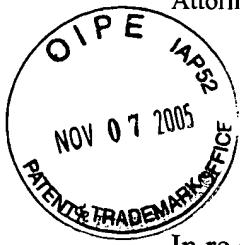
Vincent H. Anderson
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Telephone Number

November 03, 2005
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required.

*Total of _____ forms are submitted.



PRE-APPEAL BRIEF REQUEST FOR REVIEW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)
Vandanapu et al.)
Application No: 10/741,304)
Filed: December 18, 2003)
For: BIT ALLOCATION FOR ENCODING)
TRACK INFORMATION)

Examiner: Jean Bruner Jeanglaude

Art Unit: 2819

Mail Stop AF
Assistant Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

In response to the Final Office Action mailed August 1, 2005, and in conjunction with the Notice of Appeal filed concurrently herewith, Applicants respectfully request review of the final rejection of the claims of the above-referenced application in view of the following.

Claims 1, 9, 13, and 17 are the independent claims pending in the above-referenced patent application, and are the subject of this Request for Review. The Final Office Action mailed August 1, 2005 made final the rejection of these claims under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,728,669 of Benno (*Benno*). Applicants maintain that this rejection is improper on its face at least because the cited reference fails to support a *prima facie* anticipation rejection under MPEP § 2131.

All the independent claims recite limitations directed to identifying one of multiple **tracks** for each of two subframes and generating a **track indicator** to indicate to a decoder the **identified track for both subframes**.

In Applicants Response of June 20, 2005 Applicants stated that the application of Benno to the invention as recited in the claims is off topic. Applicants maintain that position. Benno discusses compression of data signals. In general, in Figure 5, Benno shows a lookup table to indicate the position of **pulses** within tracks of a subframe. Figure 6 of the reference likewise shows a lookup table to indicate the position of pulses within tracks of a subframe. The emphasis of these figures is to display how the pulses are distributed. As Applicants have understood Benno, the reference fails to disclose or suggest within the discussion of these figures, or anywhere else, a **track indicator** as recited in the independent claims.

In more detail, Benno discloses lookup tables in Figures 5 and 6. The position of the **pulses** within the tracks is indicated in the lookup tables. See col. 2, lines 20 to 55; col. 3, lines 36 to 62. Furthermore, the reference discusses in relation to Figure 10 the use of the lookup tables. See col. 6, line 58 to col. 7, line 18, esp. col. 7, lines 5 to 15. As Applicants have understood the reference, Benno discusses encoding a first pulse position with four bits (see col. 2, lines 23 to 26; col. 2, lines 40 to 41), and then encoding a second pulse position with four more bits, with the position of the second pulse determined relative to the first pulse position (see col. 2, lines 58 to 61; col. 3, lines 44 to 51; col. 7, lines 5 to 12). Thus, separate indicators are used for the different pulse position indicators. As specifically set forth in col. 7, lines 5 to 15, Benno discusses determining the offset of the two pulse positions. Applicants have understood this discussion to mean that once the relative spacing of the pulse positions is determined, rather than be placed in an absolute location within the next track, Benno contemplates placing the pulse in a position relative to the offset. At no point does Benno infer that the position will be indicated in any manner other than with the four bits discussed above – and merely discusses

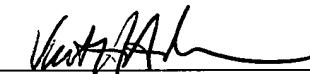
that the determination of which position to use is determined in relation to the pulse of the previous track.

Applicants have set forth a detailed discussion of the reference for purposes of pointing out the defects in the reference, and the error in the Office Action by relying on Benno as a basis for its rejection of the claimed invention. As a first matter in relation to the discussion of the reference, Applicants repeat that the reference is not applicable to the invention as claimed. By pointing out the defects of the reference, Applicants make no implication or suggestion that the lookup table of Benno to indicate pulse positions can in any way be interpreted to disclose an indicator of tracks within a subframe. To the contrary, Applicants assert that to so interpret the reference is error. Benno discusses the positioning of pulses within tracks, and fails to discuss identification of tracks or the indication of tracks within a subframe. No reasonable interpretation of the cited reference can be made to support the rejection in the Final Office Action.

Thus, the cited, relied-upon reference fails to disclose or suggest at least one element of the claimed invention, and so fail under MPEP § 2131 to anticipate the claimed invention. The dependent claims necessarily include the limitations of the claims from which they depend. Thus, these claims necessarily are patentable over the cited reference for at least the reasons set forth above.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

Date: November 3, 2005


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Theresa Belland

Date 11/3/05